

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE FAIR,

Plaintiff,

vs.

Case No. 04-CV-72337
HON. GEORGE CARAM STEEH

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION;
GRANTING, IN PART, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT;
AND REMANDING TO THE COMMISSIONER OF SOCIAL SECURITY

This matter is before the court on the parties' cross-motions for summary judgment as to plaintiff Willie Fair's claim for judicial review of defendant Commissioner of Social Security's denial of his March 5, 2001 application for disability insurance benefits. The matter was referred to Magistrate Judge Wallace Capel, Jr.. On July 12, 2005, Magistrate Judge Capel issued a 13-page Report and Recommendation recommending that plaintiff's motion for summary judgment be granted, in part, to the extent this matter should be remanded to defendant Commissioner of Social Security for an examination and evaluation of plaintiff's literacy. Magistrate Judge Capel noted that Grid Rule 202.09 requires a finding of disability if the applicant is closely approaching advanced age (plaintiff was 53 years of age on the date of his September 5, 2002 hearing before an ALJ), is found capable by the ALJ of light work (as determined here), his past relevant work was unskilled (as determined here), and the applicant is illiterate. Magistrate Judge Capel also recommends denying

defendant's motion for summary judgment because there is not substantial evidence in the record to support a meaningful determination of plaintiff's literacy, warranting remand as opposed to an immediate award of benefits. Neither party has filed timely objections. See 28 U.S.C. § 636(b)(1); E.D. Mich. L.R. 72.1(d)(2).

Having reviewed the record and Report and Recommendation, and in the absence of timely objections, the court hereby ACCEPTS Magistrate Judge Capel's well reasoned July 12, 2005 Report and Recommendation as its own. Plaintiff's motion for summary judgment is hereby GRANTED, IN PART, to the extent this matter is hereby REMANDED to defendant Commissioner of Social Security for further proceedings consistent with the July 12, 2005 Report and Recommendation. Defendant's motion for summary judgment is hereby DENIED.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: August 8, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on August 8, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk